

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JOHN DOE 117, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	07 L 11952 consol. 09 L 2120
)	
THE CHICAGO PROVINCE OF THE SOCIETY)	Calendar D
OF JESUS, <i>et. al.</i> ,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Plaintiffs John Doe 117, John Doe 118 and John Doe 129 claim that they were sexually abused by Defendant Donald McGuire at various times between 1984 and 2002. McGuire is a defrocked Roman Catholic priest who is now imprisoned for sexual abuse of several young men including two of the three plaintiffs. Defendant Chicago Province is an Illinois not-for-profit corporation which employed and exercised control over McGuire.

Plaintiffs have filed a motion seeking leave to file an amended complaint which asserts a claim for punitive damages against the Chicago Province pursuant to 735 ILCS 5/2-604.1. This requires the court to consider the legal standard for imposition of punitive damages in a negligence case and whether the facts in this case warrant granting permission to do so.

Legal Standard for Punitive Damages.

Section 604.1 provides that the trial court may grant leave to file a punitive damages claim "after a hearing," if the plaintiff establishes a "reasonable likelihood" of proving facts at trial which support it. The motion seeking leave must be filed not later than 30 days after the close of discovery. The motion raises a question of law which must be decided by the trial court based upon the evidentiary

record at the time of the hearing. The evidence must be viewed in the light most favorable to the plaintiff. *Stojkovich v. Monodnock Building*, 281 Ill.App.3d 733, 742-43 (1st Dist. 1996).

The purpose of punitive damages is to punish the offender and to deter him and others from wrongdoing in the future. Punitive damages can be awarded only in the case of willful and wanton conduct “ . . . involving some element of outrage similar to that usually found in crime . . . either because defendant’s acts are done with an evil motive or because they are done with reckless indifference to the rights of others.” In this context, willful and wanton misconduct “ . . . approaches the degree of moral blame attached to intentional harm, since the defendant deliberately inflicts a highly unreasonable risk of harm upon others in conscious disregard of it.” *Loitz v. Remington Arms Co.*, 138 Ill.2d 404, 415-16 (1990).

Evidence of substantially similar occurrences (SSO’s) is admissible to show conscious disregard for the safety of others. *Borton v. Chicago & N.W. Transp. Co.*, 325 Ill.App.3d 1005 (1st Dist. 2001). In that case, the crew of a commuter train failed to check to see that passengers had safely debarked before signaling the engineer to proceed. As a result, the plaintiff, whose violin case was trapped inside the closing doors, was dragged by the shoulder strap underneath the train and suffered an amputation of her leg. There had been three SSO’s in a four-year period preceding plaintiff’s injury in which passengers’ limbs or clothing had been trapped inside closing car doors. The railroad’s safety personnel admitted that the SSO’s were serious accidents which it had a duty to prevent, but no action was taken to prevent a readily foreseeable recurrence. The court concluded: “Viewing the evidence in the light most favorable to the plaintiff, there was evidence of a conscious disregard of passenger safety.” *Borton, supra*, at 1033. It upheld an award of \$900,000 in punitive damages.

Punitive damages can be assessed against a corporation based upon vicarious liability for the acts of an employee or agent. *Mattyasovszky v. West Town Bus Co.*, 61 Ill.2d 31, 36-37 (1975); *Kemner v. Monsanto Co.*, 217 Ill.App.3d 188 (5th Dist.1991). To be sure, the justification for punitive damages is sharply diminished in cases of vicarious liability, but they can nevertheless be imposed under the conditions stated in Sec. 217C of the Restatement (2d) of Agency, which provides in relevant part:

“Punitive damages can properly be awarded against the master or other principal because of an act by an agent if, but only if:

(b) the agent was unfit and the principal was reckless in employing him.”

This is the so-called “corporate complicity” rule. See *Kemner, supra*, at 205.¹

Punitive damages can be assessed against a not-for-profit corporation. *Poulos v. Lutheran Social Services*, 312 Ill.App.3d 731 (1st Dist. 2000); *Wisniewski v. Diocese of Belleville*, 406 Ill.App.3d 1119 (5th Dist. 2011).

In *Wisniewski*, the jury awarded \$ 2.4 million in compensatory damages and \$ 2.6 million in punitive damages against the diocese for sexual abuse of a teenage boy. The value of the case as precedent is reduced, because the propriety of punitive damages was assumed by the parties and was not discussed in the appellate opinion. However, the facts are strikingly similar to the allegations made by the plaintiffs herein.

¹ At oral argument on June 7, 2011, counsel for plaintiffs stated that two of his three clients were abused at Canisius House in Evanston, IL, a building owned by the Chicago Province. If these facts were properly pleaded, the Chicago Province could be subject to direct liability under Sec. 317 of the Restatement (Second) of Torts: “Duty of Master to Control Servant.” Section 317 provides that a master has a duty to control the conduct of a servant acting outside the scope of his employment so as to prevent him from inflicting intentional harm, provided that the conduct occurs upon the master’s premises and the master knows of the need to control the servant and has the ability to do so. Section 317 is followed in Illinois, so long as notice of the servant’s misconduct is available to a person having “general supervisory authority” over him. *Hills. v. Bridgeview Little League Assn.*, 195 Ill.2d 210, 232 (2000). In this situation, the need to consider corporate complicity would be eliminated.

The perpetrator of the abuse was one Fr. Kownacki. Before he met the plaintiff, the diocese had direct knowledge from a 16-year-old girl, Gina, that the priest had sexual relations with her and was possibly the father of her child, whom he attempted to manually abort. The diocese also had hearsay knowledge through Gina of a homosexual relationship with two young boys. Diocesan officials confronted Kownacki and told the priest he needed help. Notwithstanding its knowledge of its priest's misconduct, the diocese transferred him to a new parish, whose members were informed by a letter from the bishop that they could have confidence in Kownacki's "... knowledge, piety, prudence, experience and general character." No further investigation of Gina's allegations was made; no discipline was meted out to Kownacki; nor were the plaintiff's parents or other parishioners told about his wrongdoing. In fact, Kownacki was not removed from active ministry for 21 years after the diocese first knew that he was a violent sexual child molester, during which time the diocese transferred him from parish to parish, always with a glowing recommendation. *Wisniewski, supra*, at 1123-42.

There can be no question that a religious organization can be found liable for punitive damages, if it has recklessly permitted an unfit employee or agent to sexually abuse minors with knowledge of his propensity to do so. It remains to be determined whether the plaintiffs have shown a reasonable likelihood of proving such facts in this case.

Prior Knowledge of the Chicago Province.

The Chicago Province is one of ten Jesuit jurisdictions in North America. It includes all of Illinois except the diocese of Belleville (across from St. Louis), all of Indiana and parts of Ohio and Kentucky. Its chief officer is known as the Provincial and his assistant is known as the Vice Provincial or Socius. Daniel Flaherty Dep., PX 1. Accordingly, the following analysis is focused upon facts known to the men who occupied these two positions between 1970, when the Chicago Province first received undisputed evidence of McGuire's misconduct, and 2003, when it finally notified the Archdiocese of Chicago that it could not issue a letter of good standing for him.

In 1969 and 1970, Fr. Thomas Diehl was the Vice Provincial of the Chicago Province, Fr. John Reinke was the President of Loyola Academy in Wilmette, IL, and Vic Bender and another young man were present or former students at the school. (McGuire was ultimately convicted of abusing these two boys by a Wisconsin court in 2006). McGuire was a teacher at Loyola during 1966-1970. The young man's parish priest, Fr. Schlax, informed Reinke orally and in writing that Vic Bender and the young man had almost continuously stayed overnight in McGuire's room during the preceding school years, that the young man had been sexually molested and that he described McGuire as a "pervert." On January 8, 1970, Reinke wrote McGuire to inform him that, with the approval of the Provincial, he was immediately relieved of his teaching duties at Loyola and required to move to a new residence. PX 9. However, Reinke's letter did not state any reason for this action beyond a vague reference to "family problems." On January 16, 1970, Reinke wrote Diehl, stating that McGuire's presence at Loyola had become "positively destructive and corrosive" and that McGuire "cannot be corrected." PX 10. The letter continued:

"I am anxious, as far as it can be accomplished, to have his departure seem to be perfectly normal, and even a better thing, as far as any public awareness of its cause is necessary. That's why I have kept it in terms of a sabbatical, and in terms of completing the very valuable work he contemplates on Oedipus, and the obviously valuable pursuit of his degree. Whether he will accept this is, of course, a question mark. I think it is important not to let it hang in suspensio as to when and where he is to leave here. I consider it absolutely essential that he be removed from this community before the start of the second semester.

On January 21, 1970, Diehl wrote McGuire to inform him that his "sabbatical" was permanent and that he could not return to Loyola. PX 11. Thus, in January 1970, the Chicago Province knew that McGuire had been involved in an inappropriate relationship with at least two adolescent boys, had been fired, and that the reasons had been falsified.

By 1976, McGuire had relocated to the West Coast. He served as a professor at the University of San Francisco and later held posts under the jurisdiction of the Archdiocese of Los Angeles. His aberrant behavior caused him to be thrown out of both places, although no explicit reports of child sexual abuse made their way back to Chicago. PX 12-16.

In 1985, McGuire hit upon the idea of becoming a Retreat Master. The Chicago Province's brief describes such a person as a "... clergyman who serves as spiritual director for sessions of prayer and reflection that are popular within the Catholic Church. The Retreat Master is the center of attention, the leader of prayers, the homilist, and the person who teaches and counsels the faithful." Chicago Province's Response, p. 7. This position enabled McGuire to travel widely in the American West and even to India without supervision. It also enabled him to recruit adolescent boys to travel with him as personal assistants.

In February 1991, Fr. Robert A. Wild, then Provincial of the Chicago Province, received a telephone call from Br. Ricardo Palacio, Director of the Christian Brothers Retreat House in St. Helena, CA. Palacio reported that McGuire had been traveling with a teenage boy from Alaska, and it appeared that they were sleeping in the same room. Palacio himself had knocked on the door. He heard giggling, and, when the boy answered, his hair was disheveled and his shirt untucked. McGuire was lying on the bed fully clothed.

Fr. Wild's memo to the file states that there had been no previous complaints about McGuire's behavior, but this assertion is contradicted by Palacio's deposition testimony, in which he indicated that Fr. Wild admitted his knowledge of previous incidents. PX 17, Palacio Dep., p. 59-60, PX 19. Wild acknowledged "... this travel business is at least very imprudent" and that the matter certainly needed to be pursued.

Fr. Wild requested McGuire to fly back to Chicago from Tijuana, Mexico for a face-to-face conference. McGuire vigorously denied any impropriety, and Fr. Wild apparently accepted his explanation. However, in a letter dated February 27, 1991 confirming their conversation, Fr. Wild proposed and McGuire agreed as follows. PX 20:

"I therefore asked of you two changes in your behavior, and you readily agreed to both. First of all, I ask that you not travel on any overnight trip with any boy or girl under the age of 18 and preferably even under the age of 21. Secondly, I asked you to confine any further contact that you might have with [the boy from Alaska] to situations in which at least one of his parents would also be present."

While McGuire accepted this and four later sets of "guidelines," absolutely no effort was ever made by the Chicago Province to check whether he was abiding by them.

On April 26, 1993, Fr. Joseph Fessio of the California Province of Jesuits called Fr. Fran Daly, Socius of the Chicago Province from 1991 to 1997. Fr. Fessio informed Fr. Daly that McGuire had traveled to Russia with a teenage boy from Walnut Creek, CA, that they had showered together, that they had read hard pornography together, and that they had masturbated together. PX 23. This report was confirmed by a telephone conference between Fr. Daly and the lawyer for the boy's family. PX 24.

On April 30, 1993, McGuire met personally with Fr. Daly. Daly told him that arrangements had been made for him to be evaluated at St. Luke Institute in Silver Spring, MD, a facility which provides psychiatric services for Catholic priests on May 9, 1993. However, Fr. Daly granted him permission to conduct a retreat in Phoenix, AZ before reporting to St. Luke "... provided he told the superior that he was under an allegation and that he could not be with minors without supervision." PX 26. During that week in Phoenix, McGuire molested one of the named plaintiffs, John Doe 117, who was then age 13.²

² John Doe 117's deposition dates this incident as "early summer or late summer" 1993. PX 28. The record does not reflect that McGuire made more than one visit to Phoenix in that year. The court believes that there is a "reasonable likelihood" that plaintiffs can pinpoint the date.

Fr. Daly received a report from St. Luke Institute dated May 25, 1993. Plaintiffs' Reply Memorandum, PX 5. McGuire was administered the Minnesota Multiphasic Personality Inventory and the Millon Clinical Multiaxial Inventory, Second Edition. These profiles suggested a person who "minimizes personal faults" and "has little insight into his behavior," with "characterological evasiveness and possibly significant deficits in introspection . . . due to emotional impoverishment and thought vagueness." Plaintiff's Reply Memorandum, PX 5, p. 7). The report also noted that his Rorschach results were of particular concern, suggesting "someone who has considerable internal distress, a strong tendency to misperceive reality, and a lack of resources to control [himself]." He was diagnosed with a sexual disorder and as a person with paranoid, narcissistic and compulsive traits. Plaintiffs' Reply Memorandum, PX 5, pp. 7-9.

In its Summary and Recommendations, the report concluded:

"There have been several complaints about his relationship with young men. At best, his relationships are extremely imprudent. Fr. McGuire insists that he is 'saving' these young men. However, it is likely that such relationships are feeding his own internal needs. It was relayed to us that he told one of the boy's fathers, 'You don't realize how much he needs me.' But it is very likely that Don does not realize how much he clings to these young men.

We recommend that Fr. McGuire return to Saint Luke Institute for residential treatment. In the interim, we recommend that he discontinue traveling with young people or engaging young people directly in his ministry without supervision."

Between May 11, 1993 and July 3, 1993, the father of the teenage boy from Walnut Creek and the family's lawyer repeatedly notified the Chicago Province that other boys may have been molested by McGuire, and they particularly identified John Doe 130, urging the Jesuits to intervene. PX 37-39. Although Fr. Daly wrote the father on July 19, 1993 promising that the Jesuits would try to find a way to reach out to John Doe 130, nothing was done. PX 41. The abuse of John Doe 130 continued until January 1995, when his mother left a message demanding that McGuire break off all contact with him

and leave her son's belongings with the concierge of the Los Angeles hotel where they had apparently been staying. PX 43.

On February 17, 1995, Fr. Daly wrote McGuire citing four complaints which the Chicago Province had received about his relationships with teenagers: the boy from Alaska, the boy from California, John Doe 130, and a 1994 complaint from the mother of a boy who had attended Loyola Academy. PX 44.

(No explanation exists as to why Fr. Daly did not mention the complaints about the Loyola students in 1970). No discipline was imposed. McGuire was simply reminded to observe the guidelines which he had repeatedly violated and to have no contact with the family of John Doe 130. Fr. Daly concluded:

"Let us hope that no more alleged incidents come to light. You must understand that the [four complaints] are serious. There must be no more. I am calling you to a prudence greater than that which you have shown in recent years."

Notwithstanding its knowledge of four (or six) complaints about McGuire's misconduct with teenage boys and the St. Luke Institute's diagnosis that he was afflicted with a sexual disorder with paranoid, narcissistic and compulsive traits with no insight or ability to control himself, the Chicago Province continued to hold McGuire out as a fully qualified and credentialed priest. Thus, the Provincial, Fr. Richard J. Baumann, notified the Archdiocese of Chicago by letter on December 22, 1998, PX 46:

"This is to state that Rev. Donald J. McGuire, S.J. is a priest in good standing in the Archdiocese of Chicago. . . . Rev. McGuire, S.J., is under no canonical restriction, penalty or sanction. He enjoys all of the faculties of the Archdiocese of Chicago. We have never received any information that would cause us to restrict his ministry in any way nor do we see any problem with another diocese extending him faculties and allowing him to minister there. To the best of my knowledge and having inquired of others in the external forum, there have never been any reports of improprieties on Father's part. He has never been the object of legal proceedings and specifically there is nothing to our knowledge in his background which would restrict any ministry with minors."

Fr. Baumann admitted at his deposition that he was aware of prior complaints and prior restrictions imposed on McGuire by predecessor provincials at the time he wrote the good standing letter. PX 47.

On January 26, 2000, the Socius, Fr. Rick McGurn, wrote a memo to Fr. Baumann which, after recitation of the many complaints against McGuire, recommended against providing him with a good standing letter for the Bishop of Las Vegas. But still no attempts were taken to thwart his predatory behavior.

John Doe 116, who was 13 years old when he first met McGuire, was essentially living at Canisius House in Evanston right under the noses of the Chicago Province officials beginning in 1999. Fr. McGurn was advised of this relationship by a telephone call from Jesuits in California in June 2000; yet he took no steps to investigate this matter or end it. PX 49.

In September and October 2000, two families from Georgia contacted Fr. McGurn to express concerns about McGuire. One of them was John Doe 119. His parents complained that McGuire repeatedly pressed pornography on him. PX 51-52. The Chicago Province's response to these complaints was to make McGuire sign a new set of guidelines. PX 57-58. This time he was not to be alone with any man or woman under age 30.

On August 7, 2002, Fr. McGurn wrote a memo to the Chicago Province's procurator, Robert Geisinger. PX 63. Fr. McGurn acknowledged that McGuire had a long history of inappropriate behavior with teenage boys, that he had repeatedly violated guidelines set for him, and that he had not been properly monitored. McGurn disclosed that the Provincial, Fr. Baumann, proposed to end his itinerant retreat ministry and restrict him to local duties under strict supervision. As a last resort, the Provincial was prepared to revoke his priestly faculties, but he was reluctant to do so because McGuire would likely become belligerent and demand a canonical lawyer and "... the Provincial wants to avoid having to communicate with the Archdiocese."

On December 1, 2002, Fr. Baumann wrote McGuire to administer a formal canonical warning. PX 64. His retreat ministry was terminated and he was given a new assignment – sacramental ministry to communities of religious women within the geographical boundaries of the Archdiocese of Chicago. On June 26, 2003, the Chicago Province notified the Archdiocese that it could not provide a letter of good standing for McGuire. As of that date, 33 years from the moment when the Chicago Province first had undeniable evidence about his inappropriate behavior with adolescent boys, after at least nine credible complaints, and two months before the first of many civil lawsuits was filed, McGuire’s career as a sexual predator was over.

Defenses Raised by the Chicago Province.

Initially, the Chicago Province suggests that plaintiffs’ request to file a claim for punitive damages is not timely. Sec. 604.1 states that leave must be sought not later than 30 days after the close of discovery. No order closing discovery has been entered in this case. The plain language of the statute makes further discussion of this argument unnecessary. *Segers v. Ind. Comm.*, 191 Ill.2d 421 (2000).

In general, the Chicago Province contends that the evidence fails to show that it acted intentionally or with reckless indifference to the safety of others so as to justify imposition of punitive damages. However, its recitation of the evidence is incomplete, misleading and almost devoid of citation to the record. Here are the particulars:

1. The Chicago Province notes that McGuire was fired by Loyola Academy after Fr. Schlax forwarded a complaint from a student who claimed he was molested while staying overnight in McGuire’s room. But it fails to mention that two students complained, that Loyola’s president, Fr. Reinke, lied about the reasons for McGuire’s dismissal, that the Provincial was informed about this misinformation, and that any mention of the incident apparently disappeared from McGuire’s personnel file. PX 10.

2. The mother of the boy from Alaska sent a letter defending McGuire and rebuking the Jesuits for questioning him. DX A. However, reliance on this letter is belied by Br. Palacio's eyewitness account and Fr. Wild's acknowledgement that the incident was serious and needed to be pursued. PX 17.
3. Without citation to the record, the Chicago Province asserts: "On a number of occasions over the years, when troubling reports surfaced about McGuire's conduct with these young men, it would be the victim's parents who stood to McGuire's defense and who denounced his accusers." Chicago Province Response, p. 9-10. Aside from the letter from the mother of the boy from Alaska, the only letter from a parent relied upon by the Province was written by the mother of John Doe 130 on November 29, 1993. DX B. By January 1995, however, she feared that McGuire was harassing her son and demanded that he break off all contact with him. PX 43. The Chicago Province also fails to mention that it was sued by John Doe 130 and has since paid him an undisclosed amount in settlement.
4. The Chicago Province received a letter dated November 23, 1993 from Joseph T. McGuire, an attorney and McGuire's brother. The writer claimed that another Jesuit, Fr. Hardon, had met personally with the parents of the boy from Walnut Creek, CA and that any hint of sexual misconduct by McGuire was "put to rest." DX C. p. 13. Reliance on this hearsay statement, which is uncorroborated in the record, is difficult to understand in light of the repeated communications from the parents and their lawyer expressing concerns about their son, another individual, John Doe 130, and others. PX 37-39.
5. The Chicago Province received a report from McGuire's personal psychiatrist, a Dr. Murrell, which questioned the St. Luke Institute diagnosis. The writer stated that he had been a personal friend of McGuire since 1990. Even he admitted that McGuire needed to be more prudent in his relations with young people, especially when traveling. DX D, p. 3.

In sum, the occasional expressions of support for McGuire are overwhelmed by the volume of specific complaints about his conduct and the explicit diagnosis from the St. Luke Institute that he was afflicted with a sexual disorder, that he lacked the ability to control himself and that he should not be allowed to be alone with young people.

Conclusion.

Was the Chicago Province reckless in employing an unfit employee?

Plaintiffs allege that John Doe 129 was abused between 1984 and 1997, that John Doe 117 was abused between 1988 and 1994, and that his younger brother, John Doe 118, was abused between 2001 and 2002. If the Chicago Province had acted promptly to cut McGuire off from contact with young men when it first learned of his misconduct in 1970, none of this abuse would have occurred. If it had restrained McGuire when he was diagnosed with a sexual disorder in 1993, the abuse of John Doe 118 would have been avoided altogether and the abuse of John Doe 129 and John Doe 117 would have been substantially curtailed.

The Jesuits' claim that they were ill-equipped to recognize and confront McGuire's evil acts rings hollow in light of the fact that he owed them absolute obedience. Chicago Province Response, p. 3. The guidelines they set for him were a sham. No meaningful restraint was placed on McGuire's conduct until a matter of weeks before the first lawsuit was filed. Indeed, the record shows more than mere acquiescence. By 1998, the Chicago Province possessed sure and certain knowledge of McGuire's predations. Notwithstanding, it wrote a good standing letter to the Archdiocese of Chicago which stated that it had never received reports of any improprieties committed by McGuire and that there was no reason to restrict his ministry to minors. PX 46. In view of the author's deposition testimony, it is clear that the statements in this letter were knowingly untruthful.³

³ Liability also arises from the Chicago Province's silence in the face of a known danger. *Wisniewski v. Diocese of Belleville*, *supra*, at p. 1175-77; *Kennedy v. Medtronic, Inc.*, 366 Ill.App.3d 298, 304-05 (1st Dist. 2006).

The court accepts that the Jesuits are a religious order with a rich history of service to the faithful. Chicago Province Response, p. 3. However, the leaders of the Chicago Province fell far short of this ideal. Plaintiffs have amply demonstrated a reasonable likelihood of proving facts at trial which would support an award of punitive damages.

ORDER

Plaintiffs' motion for leave to file an amended complaint asserting a claim for punitive damages is GRANTED.

ENTER: _____

Judge

